In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 19746 of 2006

Date of Decision: 14.12.2006

Jagmeet Kumar and others.

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. Sarwan Singh, Sr. Advocate with
Mr. A.S. Parmar, Advocate
for the petitioners.

...

J.S. Khehar, J.

Learned counsel for the petitioners wishes to withdraw the instant writ petition qua petitioner No.4, and that, he shall make an appropriate application in case a candidate, lower than him in the merit list, is appointed.

In so far as, the other petitioners are concerned, the solitary contention of the learned counsel for the petitioners is, that they have been ousted from the process of selection on account of the fact, that 25 marks have been ear-marked for interview. In this behalf, it is the vehement contention of the learned counsel for the petitioners, that in the selection process for the posts of Constable (Operator), candidates were evaluated on the basis of written test, as well as, interview. For the written test, the

selection process had considered the claim of the candidates on the basis of 100 marks, whereas, for interview, the maximum marks were 25. Relying on the observations recorded by the Apex Court in Munindra Kumar and others Vs. Rajiv Govil and others, 1991(3) SLR 712, learned counsel for the petitioners vehemently contends, that the entire process of selection deserves to be set aside. While relying on Munindra Kumar's case (supra), learned counsel for the petitioners invited our attention to the following observations recorded in the aforesaid judgement:

> ".....Thus in our view as already held in Mohinder Sain Garg's case (supra), 15 per cent marks in all are to be kept for interview, and if the rule making authorities want to keep group discussion also as one of the modes of selection then marks for interview and group discussion should not exceed 10 per cent and 5 per cent respectively of the total marks."

In view of the legal position expressed by the Apex Court, as has been noticed above, it is the vehement contention of the learned counsel for the petitioners, that the instant process of selection, wherein the petitioners have not been selected for appointment against the posts of Constable (Operator), deserves to be set aside.

Before we take upon ourselves the task of determining the legal plea advanced by the learned counsel for the petitioner, it would be pertinent to notice a few facts, pertaining to the process of selection which is subject matter of challenge. In the aforesaid context, it deserves to be noticed, that the advertisement, which is the basis of the selection process, which is the subject matter of challenge at the hands of the petitioners, was issued on 15.6.2006. Petitioners No.1 to 5 responded to the aforesaid

advertisement as general category candidates, whereas, petitioner No.6 applied for the post of Constable (Operator) as a backward class candidate. It is not a matter of dispute, that all the petitioners were allowed to participate in the process of selection, which comprised of determination of physical standards, physical efficiency test, a written test and interview. A perusal of the advertisement dated 15.6.2006 reveals, that the manner in which the merit of candidates was to be determined, was expressly brought to the notice to the candidates. Relevant part of the advertisement dated 15.6.2006, delineating the selection process, is being reproduced hereunder:-

> "Selection Process:
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> The applications would be screened by the Board to exclude those who do not fulfil the eligibility criteria. Selection process would comprise of four phases out of which the first two phases would be qualifying and eliminatory in nature.
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> a) Phase-I Physical Measurement:
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> Eligible candidates will be screened for height and chest measurement. Height would be measured first, chest measurement would be done only for the candidates who are of the prescribed height and above. Only the qualifying candidates will be sent for the physical efficiency test (PET).
>
> b) Phase-II Physical Efficiency Test (PET):
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> The candidates qualifying the minimum physical standards will be allowed to participate in he physical efficiency test consisting of the following events:-
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> i) One mile (1600 meters) race to be completed in 8

minutes (only one chance).

ii) Long jump 11 feet (3 chances)

iii) High jump 3 feet 6 inches (3 chances).

Note: A candidate must qualify in all the above 3 events. Failure to qualify in any one of the above events of PET will render the candidate as disqualified.

c) Phase-III Written Test:

The candidates who qualify in the physical efficiency test will be required to appear in a written test, which will comprise of two parts.

i) Part-I (25 marks) will consist of a paper with questions on general knowledge, environment, science, numerical aptitude test of reasoning etc. The paper can be answered in Punjabi, Hindi or English.

ii) Part-II (75 marks) will comprise of a test of the technical knowledge of the candidate and will have questions related to electrical communication and information technology.

iii) Minimum pass marks in written examination will be 35% for the candidates from Scheduled Castes/Scheduled Tribes category, 40% for those from backward classes and 45% for all other categories.

d) Phase-IV Interview:

iv) Merit lists shall be drawn up separately for different categories. If available, candidates equaling at least three times the number of seats offered in each category in the order of merit based on the total marks in the written examination

would be called for interview.

v) A maximum of 25 marks will be awarded on the basis of the interview after assessing the candidates for his personal bearing, response, orientation and general level of intelligence etc.

e) Final Merit:

The final merit of the candidates will be drawn category-wise on the basis of the total marks obtained in the written test and the interview subject to the Govt. rules/standing instructions."

On the basis of the factual position noticed hereinabove, it is apparent, that the petitioners were well aware of the marks which had been assigned for interview in the process of selection in which they had participated. Inspite of being aware of the same, the petitioners took their chance, hoping that they would be selected. It is only after they realised, that they had not made the grade for being selected and appointed against the advertised posts of Constable (Operator), the petitioners moved this Court to challenge the entire process of selection by asserting, that the process of selection adopted by the authorities, was defective. In so far as, the instant issue is concerned, reference deserves to be made to the following observations recorded by the Apex Court in Munindra Kumar's case (supra), relied upon by the petitioners themselves:

"The next question which arises for consideration is as to what direction would be just and proper in the circumstances of this case. We do not agree with the High Court to quash the entire selection made by the Board for the posts of Assistant Engineers (civil). It may be noted that Rajeev Govil, Vivek

Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations."

In view of the fact, that the petitioners have challenged the process of selection after the same had been completed, although, they were well aware of the marks which had been assigned for the interview, which were clearly expressed in the advertisement itself, we are of the view, that the petitioners, who took their chance on the basis of the weightages specified in the advertisement, cannot at this juncture, be permitted to assail the same well after the entire process of selection has been completed.

For the reasons recorded above, we find no merit in this petition, and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

14.12.2006
sk.